IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 442 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRI. RANCHHODBHAI NATHABHAI PATEL

Versus

1.MANUBHAI HARJIBHAI PATEL BHAILALBHAI MULJIBHAI &ORS.

Appearance:

MR JITENDRA M PATEL for Petitioner

NOTICE SERVED for Respondent No. 1

MR BS PATEL for Respondent No. 3

MR ST MEHTA for Respondent No. 4-State

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/09/2000

ORAL JUDGEMENT

This revision under Section 397 read with Sec. 401 CrPC has been preferred by the complainant against

the judgment and order dated 21st May, 1983 passed by the learned Judicial Magistrate, First Class, Dabhoi in Criminal Case No.2515 of 1981. The revision-petitioner is the complainant.

The complainant, at the relevant time, was the President of Parikha Seva Sahakari Mandali Limited, a Cooperative Society. It was alleged that the complainant had succeeded one Manubhai Harjibhai Patel as the President ie., in the year 1979, the accused Manubhai Harjibhai Patel was the president of the said Society and accused no. 2 Bhailalbhai Muljibhai Patel was the Secretary. The accused no. 3 Jashbhai Chaturbhai Patel was the Accountant. The accused persons being the office bearers of the Society were looking after the day today affairs of the Society and the records of the Society used to remain in their possession. While examining the accounts of the Society, the auditor had detected certain financial irregularities amounting to misappropriation of sum of Rs. 1,38,572=89p. Pursuant to the complaint, investigation was caused by the police. In course of investigation, the handwriting expert's opinion was called for and after examining the handwriting on the disputed vouchers, they were found to be in the hands of either of the accuseds. Pursuant to the said complaint, criminal case No. 2515 of 1981 was registered against the three accused and they were tried for the offences punishable under Sections 408 and 477A IPC. In course of trial, the prosecution examined as many as 18 witnesses; including the Investigating Officer and the Auditor. The learned Judge, however, held that the prosecution had failed to prove that at the relevant time, the accused were the President, the Secretary and the Accountant respectively of the Society. The learned Magistrate has also held that the handwriting of the accused persons on the disputed vouchers was not proved. All the three accused were, therefore, acquitted. Feeling aggrieved, the complainant has preferred the present revision.

Mr. Patel has submitted that the learned Magistrate has erred in acquitting the accused persons which has resulted into miscarriage of justice. The prosecution had produced all the relevant Resolutions on the records of the matter which prove that at the relevant time, the accused were the President, the Secretary and the Accountant respectively of the Society and that the records of the Society was in their possession. Considering the opinion of the handwriting expert, the learned Magistrate ought to have held that the disputed vouchers were written in the hands of the accused persons and thus they had committed the offence

alleged against them. He has also submitted that the learned Magistrate has failed to appreciate that the accused had admitted their guilt before the auditor and even in view of such admission, the accused ought to have been convicted. It is true that the prosecution has produced a book of Resolutions of the Society. Under the Resolution No. 13 dated 8th October, 1978 the accused no. 1 Manubhai Harjibhai Patel was appointed to be the President of the Society for the year 1978-79. Under the Resolution No. 15 of the same date, the Cash Register was placed in the possession of the Secretary of the Society - Patel Bhailalbhai Muljibhai, the accused no. 2. In my view, therefore, the learned Magistrate was not right in holding that the prosecution had failed to prove that at the relevant time, the accused nos. 1 & 2 were the President and the Secretary of the Society. However, this is not enough for recording conviction against the accused persons. The learned Magistrate has also held that the hand writing of the accuseds in the vouchers in question were not proved. It is not disputed that though the opinion of the hand writing expert was sought, such an expert was not examined and the hand writing of the accuseds on the concerned vouchers were not proved. In absence of proof of the hand writing of the accused on the disputed vouchers, no criminal liability can be fastened upon the accuseds. In respect of admission made by the accused before the Auditor, the same was not put to the accused in their examination under Sec. 313 CrPC. Thus, the accuseds having not been given opportunity to explain the statement made before the Auditor, the same cannot be used against them. No conviction, therefore, could have been recorded either on the basis of the disputed vouchers on which the hand writing of the accuseds has not been proved or on the admission made before the Auditor which was not put to the accuseds in their examination under Section 313 CrPC.

In view of the above discussion, Revision application is dismissed. Rule is discharged.

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Prakash*